



GAIL FARBER, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

April 7, 2009

IN REPLY PLEASE

REFER TO FILE: **WW-3**

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles CA 90012

Dear Supervisors:

**LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 29, MALIBU  
AGREEMENT WITH MALIBU LUMBER YARD, LLC  
(SUPERVISORIAL DISTRICT 3)  
(3 VOTES)**

**SUBJECT**

This action is to execute the attached Agreement between Malibu Lumber Yard, LLC, and Los Angeles County Waterworks District No. 29, Malibu, to accept funding in the amount of \$155,325 from Malibu Lumber Yard, LLC, for their financial participation in the cost for the design and construction of a possible future water storage reservoir and appurtenance facilities.

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 29, MALIBU:**

1. Execute the Agreement between Malibu Lumber Yard, LLC, and Los Angeles County Waterworks District No. 29, Malibu.
2. Find that the Agreement is exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to execute the Agreement for financial participation in possible future water infrastructure improvements and to find that the

Agreement is exempt from the California Environmental Quality Act (CEQA). As a condition for obtaining water service to their project, Malibu Lumber Yard, LLC, agreed to financially participate in the cost for the design and construction of a possible future water storage reservoir and appurtenance facilities. The reservoir and facilities will not expand capacity for additional water service connections in the area but are needed to provide local back-up water storage primarily to assist in meeting fire-flow reliability and safety to the existing system and to maintain the reliability of the current domestic service.

### **Implementation of Strategic Plan Goals**

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) and Community and Municipal Services (Goal 3). This Agreement will promote Fiscal Sustainability by providing a portion of funds needed to design and construct water facilities. These facilities will benefit the Malibu Lumber Yard project and other customers by providing public infrastructure needed to improve water supply reliability for domestic use and fire-fighting purposes.

### **FISCAL IMPACT/FINANCING**

There will be no impact to the County General Fund.

This Agreement provides \$155,325 in funding to the Los Angeles County Waterworks District No. 29, Malibu (District), toward a possible future project to design and construct an approximately 800,000-gallon water storage reservoir, pump station upgrades, regulating stations, and approximately 5,000 feet of water mains (Future Water Facilities) estimated to cost \$5 million. The District will proceed with the Future Water Facilities if it is able to obtain sufficient funding by charging customers with new connections in the area to contribute toward the cost. In the event insufficient funding makes the project not feasible, the District will return all funds collected, less any project expenses incurred as of the date of the refund.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The Agreement has been reviewed and approved as to form by County Counsel.

### **ENVIRONMENTAL DOCUMENTATION**

The proposed project is statutorily exempt from the CEQA. Requiring all customers with new connections in the area to fund possible Future Water Facilities is statutorily exempt from the CEQA under Section 21080(8)(D) of the California Public Resource

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Code and Section 15273(a)(4) of the CEQA Guidelines given that this action establishes funding for a capital project that is necessary to maintain service within existing service areas. Once sufficient funding is obtained, Public Works will comply with the appropriate requirements of CEQA for the future water facilities and return to your Board for appropriate action.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There will be no impact on current County services or projects as a result of this action.

**CONCLUSION**

Upon approval, please return one adopted copy of this letter and Agreement to Public Works, Waterworks Division.

Respectfully submitted,



*Fr* GAIL FARBER  
Director of Public Works

GF:AA:dvt

Attachment

cc: Chief Executive Office (Lari Sheehan)  
County Counsel

RECORDING REQUESTED BY  
LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 29  
WHEN RECORDED MAIL TO  
Los Angeles County Waterworks District  
900 South Fremont Avenue  
Alhambra, California 91803-1331

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THIS DOCUMENT IS EXEMPT FROM DOCUMENTARY  
TRANSFER TAX PURSUANT TO SECTION 11922 OF  
THE REVENUE & TAXATION CODE.

THIS DOCUMENT IS EXEMPT FROM RECORDING  
FEES PURSUANT TO SECTION 27383 OF THE  
GOVERNMENT CODE.

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Space above this line for Recorder's use

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### **AGREEMENT**

This agreement (hereinafter referred to as "AGREEMENT"), is made and entered into by and between MALIBU LUMBER, LLC, a California limited liability company, (hereinafter referred to as "MALIBU LUMBER") and LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 29, MALIBU (hereinafter referred to as "DISTRICT 29") (MALIBU LUMBER, and DISTRICT 29, hereinafter referred to each as "PARTY" and, collectively, as "PARTIES") on \_\_\_\_\_, 2009.

### **WITNESSETH**

WHEREAS, MALIBU LUMBER is the lessee and operator of real property situated in the City of Malibu, State of California, described in Exhibits A and B respectively attached hereto, (hereinafter referred to as "PROPERTY"); and

WHEREAS, the PROPERTY is situated entirely within the boundaries of DISTRICT 29; and

WHEREAS, MALIBU LUMBER is requesting that DISTRICT 29 provide water service to the PROPERTY; and

WHEREAS, the PROPERTY is located near an existing water main currently owned and operated by DISTRICT 29, in an area that lacks sufficient infrastructure, and other such necessary facilities such as storage tanks, pumps and piping, for DISTRICT 29 to provide the customary level of water service for fire fighting purposes and/or domestic use for the PROPERTY; and

WHEREAS, as a condition to obtaining water service, under the rules and regulations of DISTRICT 29 (hereinafter referred to as "RULES AND REGS"), MALIBU LUMBER must participate financially in DISTRICT 29's future design and construction of approximately 5,000 feet of 12-inch diameter water main, pump station upgrades, a regulating station, and an approximately 800,000-gallon water storage tank (collectively hereinafter referred to as "INFRASTRUCTURE"); and

WHEREAS, also as a condition to obtaining water service under the RULES AND REGS, MALIBU LUMBER must construct certain water facilities and appurtenances to provide water service to the PROPERTY, as more particularly shown on plans and specifications on file with DISTRICT 29, which PLANS AND SPECS have been reviewed by DISTRICT 29 under Specification No. 29-690(PC) (the "PLANS AND SPECS").

NOW, THEREFORE, in consideration of the mutual benefits to be derived by MALIBU LUMBER and DISTRICT 29 and of the premises herein contained, it is hereby agreed as follows:

1. MALIBU LUMBER AGREES as a condition for the PROPERTY to obtain water service from DISTRICT 29:
  - a. To construct all water facilities and appurtenances to connect water service to the PROPERTY, under the PLANS AND SPECS (hereinafter referred to as "PROPERTY SPECIFIC IMPROVEMENTS") and to dedicate for transfer to DISTRICT 29, at no charge, all PROPERTY SPECIFIC IMPROVEMENTS immediately upon said improvements being deemed complete by DISTRICT 29. DISTRICT 29 shall have no obligation to accept the PROPERTY SPECIFIC IMPROVEMENTS, which acceptance is at DISTRICT 29's sole and absolute discretion. MALIBU LUMBER shall remain fully responsible for each PROPERTY SPECIFIC IMPROVEMENT, including, without limitation, for its operation and maintenance until said date when DISTRICT 29 formally accepts the PROPERTY SPECIFIC IMPROVEMENTS.
  - b. To pay to DISTRICT any and all charges for water service as may be required under the RULES AND REGS. Nothing in this Agreement is intended to relieve MALIBU LUMBER of its obligations to comply with the RULES AND REGS.
  - c. To participate financially towards the design and construction of INFRASTRUCTURE, in the amount of \$155,325 by delivering payment to DISTRICT 29 within 90 days of the execution of the Agreement, which shall constitute payment in full for the

PROPERTY'S pro rata share of the future INFRASTRUCTURE. Notwithstanding the foregoing, MALIBU LUMBER hereby acknowledges that DISTRICT 29 makes no representation, guarantee or warranty whatsoever as to the dates or timing of the design or construction of the INFRASTRUCTURE.

- d. Prior to DISTRICT 29's acceptance of the PROPERTY SPECIFIC IMPROVEMENTS, to fully indemnify, defend and hold harmless DISTRICT 29, the County of Los Angeles, its special districts, the Los Angeles County Board of Supervisors, its board members, officers, employees, and staff from any and all claims, expenses and liability, including, without limitation, with counsel of their sole choosing, and including claims by MALIBU LUMBER and successors in interest of the PROPERTY, caused by the PROPERTY SPECIFIC IMPROVEMENTS.
  - e. Prior to completion of the construction and DISTRICT 29's commencement of operation of the INFRASTRUCTURE, to fully release DISTRICT 29 in connection with the provision of the customary level of water service for fire fighting purposes and/or domestic use for the PROPERTY. MALIBU LUMBER grants the foregoing release with full acknowledgment of and waiving MALIBU LUMBER's rights under California Civil Code Section 1542, which states: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."
- 2. MALIBU LUMBER acknowledges that any approval(s) by the Los Angeles County Fire Department prior to the completion of the INFRASTRUCTURE does not in any way relieve MALIBU LUMBER of its responsibilities under this AGREEMENT or with respect to the funding or completion of the PROPERTY SPECIFIC IMPROVEMENTS, the INFRASTRUCTURE, or to comply with all RULES AND REGS.
  - 3. DISTRICT 29 will have the option to terminate this AGREEMENT and/or water service to the PROPERTY, at DISTRICT 29's sole and absolute discretion, if MALIBU LUMBER has failed to fulfill all of the conditions in Section 1(a), (b), (c) and (e) of this AGREEMENT, in which instance MALIBU LUMBER releases DISTRICT 29 from any and all liability relating to DISTRICT 29's termination of this AGREEMENT and/or termination of water service to the PROPERTY.

4. DISTRICT 29 AGREES:

- a. To expeditiously review and process the approval of the PLANS AND SPECS pursuant to DISTRICT 29's customary standards and practices.
- b. To apply the funds paid by MALIBU LUMBER under Section 1.c of this AGREEMENT for the purposes of designing and installing the INFRASTRUCTURE.

5. IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. Each person affixing his or her signature below represents and warrants: i. that he or she has read and understood this AGREEMENT, has had opportunity to seek legal counsel, and has the full legal authority to bind his or her respective PARTY to all of the terms, conditions, and provisions of this AGREEMENT; and ii. that his or her respective PARTY has the full legal right, power, capacity, and authority to enter into this AGREEMENT and perform all of the obligations herein.
- b. Notwithstanding the potential succession to this AGREEMENT by a subsequent lessee of the PROPERTY, that MALIBU LUMBER's obligations and rights under this Agreement shall end when MALIBU LUMBER's leasehold interest in the PROPERTY ends.

6. ADDITIONAL PROVISIONS

- a. Captions. The captions and the section and subsection numbers appearing in this AGREEMENT are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections of this AGREEMENT nor in any way affect this AGREEMENT.
- b. Severability. In the event any portion of this AGREEMENT shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be severed from the AGREEMENT, and the remaining parts hereof shall remain in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of the AGREEMENT, provided the remaining AGREEMENT can be reasonably and equitably enforced.
- c. Governing Law and Forum. This AGREEMENT shall be governed by and construed in accordance with the internal laws of the State

of California. Any litigation with respect to this AGREEMENT shall be conducted in the courts of the County of Los Angeles, State of California.

- d. Waivers. No waiver by District 29, or MALIBU LUMBER of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provision.
- e. No Presumption Re: Drafter. MALIBU LUMBER acknowledges and agrees that the terms and provisions of this AGREEMENT have been negotiated and discussed between DISTRICT 29, MALIBU LUMBER, and their attorneys, and this AGREEMENT reflects their mutual AGREEMENT regarding the same. Neither PARTY shall be deemed the drafter of this AGREEMENT, and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this AGREEMENT.
- f. Assistance of Counsel. MALIBU LUMBER employed the assistance of legal counsel in the drafting, negotiation for, and the execution of, this AGREEMENT, and all related documents.
- g. Survival of AGREEMENT. The agreements, representations, and warranties made herein are intended to survive the recordation and termination of this AGREEMENT.
- h. Interpretation. Unless the context of this AGREEMENT clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.
- i. Conflicts. In the event of a conflict between the provisions of this AGREEMENT and the provisions of any other documents executed or agreements made or purported to be executed or made between the PARTIES prior to the date on which this AGREEMENT is fully executed, the provisions contained in this AGREEMENT shall in all instances govern and prevail.
- j. Entire AGREEMENT. This AGREEMENT contains the entire agreement and understanding between the parties relating to the subject matter herein, and no addition or modification of any terms or provisions shall be effective unless set forth in writing, signed by MALIBU LUMBER, and DISTRICT 29.



- k. Successors and Assigns. This AGREEMENT shall be binding upon the heirs, executors, and assigns of the PARTIES; and shall be recorded as notice with the hereinabove described PROPERTY. This notice shall be binding on all parties having or acquiring any of MALIBU LUMBER's right or interest in the PROPERTY, or any part thereof, including, without limitation, future lessees of MALIBU LUMBER's interest in the PROPERTY.
- l. No Third Party Beneficiary. This AGREEMENT is solely for the benefit of the named PARTIES with no intended third party beneficiaries.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized by MALIBU LUMBER on September 12, 2009, and by the LOS ANGELES COUNTY WATERWORKS DISTRICT 29, MALIBU, on \_\_\_\_\_, 2009.

LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO.  
29, MALIBU

ATTEST:

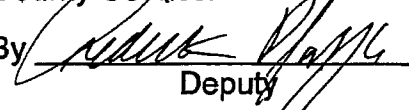
SACHI A. HAMAI  
Executive Officer of the  
Board of Supervisors of  
the County of Los Angeles

By \_\_\_\_\_  
Chairman, Board of Supervisors  
of the County of Los Angeles as  
governing body thereof

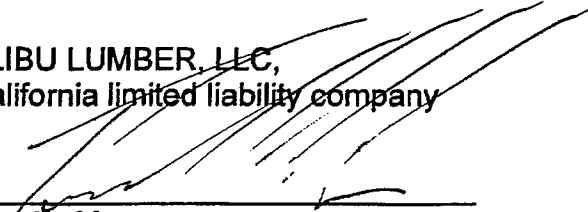
By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel

By   
Deputy

MALIBU LUMBER, LLC,  
a California limited liability company

By   
Its Manager

APPROVED AS TO FORM:

By   
Counsel for MALIBU LUMBER